No. 12412

In the United States
COURT OF APPEALS
for the Ninth Circuit

HALESTON DRUG STORES, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITIONER'S BRIEF

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PETITIONER'S BRIEF

STATEMENT OF FACTS

The Petitioner filed with the National Labor Relations Board at Portland, Oregon, an amended charge against the Unions known as the Culinary Workers Alliance, each affiliated with Hotel & Restaurant Employees and Bartenders International Union, A.F.L., of an unfair labor practice (Printed Record, pages 2, 3 and 4).

After investigating the charge, the General Counsel for the National Labor Relations Board filed a com-

plaint against the Unions alleging facts constituting an unfair labor practice by the Unions and alleging facts showing the operation of the Petitioner to be in interstate commerce or affecting commerce (Printed Record, pages 5 through 11). This charge was based on Section 8 (b) (1) and (2) and (4) (A) and (B) of the National Labor Relations Act as amended in 1947.

Previously, the Petitioner had filed a Petition with the Board against another Union asking the Board to hold an election. A hearing was held by the Board on this petition to determine whether the Petitioner was operating in interstate commerce or affecting commerce. After the hearing, the Board held that even though the Petitioner's operations were in commerce or affecting commerce, it did not effectuate the policies of the Act to take jurisdiction and dismissed the petition (Printed Record, pages 67, 68 and 69). Under the National Labor Relations Act as amended in 1947, the Petitioner had no right of review or appeal in a representation case.

August 16, 1949 was set as the date for the hearing of the complaint on the unfair labor charge. On August 5, 1949, a motion was filed by the Unions with the Board urging a summary dismissal of the complaint for the reasons that the employer involved is not engaged in an operation in commerce or affecting commerce and that even if it does affect commerce, it would not effectuate the policies of the Act to exercise jurisdiction (Printed Record, pages 11 and 12). On August 10, 1949, this motion was referred to the Trial Examiner for disposition (Printed Record, page 15). On August 11,

1949, the Trial Examiner issued an order granting the motion to dismiss the complaint on the ground that "whether or not the employer's operation affects commerce within the meaning of the National Labor Relations Act . . . , it would not effectuate the policies of the Act to exercise jurisdiction." (Printed Record, pages 16 and 17). The holding of the Hearing Officer was brought before the Board both by the employer and the General Counsel of the Board and the Board sustained the holding of the Hearing Officer (Printed Record, pages 17 through 23). The employer has now petitioned this Court to review this decision.

The Court acquired jurisdiction of this matter by reason of Section 10(f) of the National Labor Relations Act as amended in 1947 which provides:

> "any person aggrieved by a final order of the Board granting or denying, in whole or in part, the relief sought, may obtain a review of such order in any Circuit Court of Appeals in the United States in the circuit wherein the unfair labor practice was alleged to have been engaged in or wherein such person resides or transacts business. . . ."

That the Petitioner resides in and transacts business in the State of Oregon and the unfair labor practice charged was engaged in in the State of Oregon.

ASSIGNMENT OF ERROR

I.

The Board erred in not holding a hearing to determine whether the Petitioner's operations were in commerce or affecting commerce.

POINTS AND AUTHORITIES

I.

Petitioner's operations were in commerce and affected commerce.

N.L.R.B. v. Fainblatt, 306 U.S. 601, 604, 607.

N.L.R.B. v. Bradford Dyeing Ass'n., 301 U.S. 318, 326.

N.L.R.B. v. Cowell Portland Cement Company, 108 F. (2d) 198 (C.A. 9).

N.L.R.B. v. Register Publishing Company, 141 F. (2d) 156 (C.A. 9).

N.L.R.B. v. Va. Elec. and Power Co., 115 F. (2d) 414, 416 (C.A. 4), aff'd. 314 U.S. 469.

Santa Cruz Fruit Packing Co. v. N.L.R.B., 303 U.S. 453, 464.

N.L.R.B. v. Jones and Laughlin Steel Corporation, 301 U.S. 1, 36, 41.

Consolidated Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 222.

N.L.R.B. v. Suburban Lumber Co., 121 F. (2d) 829 (C.A. 3).

ARGUMENT

I.

The Petitioner is engaged in operating four retail drug stores. Annually, the employer makes purchases of drugs and medicines for resale totaling approximately $190,000.00 of which approximately 30% (about $57,000) is shipped to the employer from shippers outside the State of Oregon. The remainder, approximately 60% to 75% ($79,000 to $100,000) are purchases made

within the State of Oregon of goods that originated outside of said State. Annually, the Petitioner sells merchandise and drugs totalling in value approximately $325,000.00, all of which sales are made locally at the employer's drug stores (Printed Record, pages 19, 20, 21, 35 to 66 inclusive).

In view of the holding of the Courts, it does not seem necessary to make any extended argument to demonstrate that a business enterprise which annually purchases for resale, goods valued at about $150,000 which originate outside the State, is engaged in an operation in commerce and affecting commerce, and particularly where more than $50,000 worth of these goods are shipped directly to the Petitioner from points outside the State.

In addition to the employer's business activities described above, the employer operated a fifth store from January, 1948 to September 1, 1948, and through a wholly-owned subsidiary corporation, operated a sixth store known as the Terminal Drug Store (Printed Record, page 19). The dollar volume of gross sales and gross purchases of these two stores are not reflected in the figures set forth in the complaint. When these figures are included, the employer's gross sales amount to about half a million dollars ($478,108.63) and the cost of the goods sold amounted to $323,938.54. Approximately 70% (about $226,756) of the goods so purchased are trade-name products that are manufactured in states other than Oregon. The employer receives these products through four channels:

1. About 30% (about $68,027) by direct shipment on orders placed directly with firms outside the State.

2. A relatively small additional quantity by direct shipment from firms outside the State on orders placed with local jobbers.

3. A substantial amount delivered from local warehouses of out-of-State firms having division offices in Oregon; these shipments are in effect, direct deliveries from firms outside the State.

4. The remainder by delivery from local warehouses on orders placed with local jobbers, being products of out-of-State manufacturers shipped to jobbers for resale in Oregon (Printed Record, pages 19 and 20).

Many of the brand-named products are sold to the employer by warehouses engaged in interstate commerce including McKesson & Robbins, Upjohn Company and Sharpe & Dohme, and are often sold under dealership agreements. Much of the advertising used by the employer in window and counter displays is supplied by the manufacturers and ties in with their national advertising and sales promotion program (Printed Record, pages 19, 20 and 21).

All of these facts the Petitioner and the General Counsel stood ready to prove if a hearing had been held; and in view of these facts, it seems needless to make any argument as to whether the Petitioner was engaged in commerce or affecting commerce. The cases cited and a host of other cases definitely hold that such an operation is in commerce or affecting commerce.

POINTS AND AUTHORITIES

II.

If Petitioner's operations are in commerce or affecting commerce, the Board is compelled to take jurisdiction under the Labor Management Relations Act, 1947.

Section 1(b) of the Act.

Section 101, Section 1 of the Act.

Section 101, Section 2, Subd. 6 and 7 of the Act.

Section 101, Section 10(a) of the Act.

N.L.R.B. v. Cowell Portland Cement Company, 108 F. (2d) 198 (C.A. 9).

In the Matter of the Puritan Chevrolet, Inc., 76 N.L.R.B. 1243.

Lewiston Buick Company and International Association of Machinists, 77 N.L.R.B. 375.

Harry's Cadillac & Pontiac Co., Inc., et al., 81 N.L.R.B. #1.

Liddon White Truck Company, Inc., 76 N.L.R.B. 1181.

Robert L. Pinkenton, Doris B. Pinkenton and True Dyer, dba Bob's Auto Company, and International Association of Machinists (Ind.), Case #36-RC-290.

Inloes & Dugan Motors, and International Association of Machinists (Ind.), Case #36-B-291.

(The last two cases not being reported.)

ARGUMENT

II.

The Labor Management Relations Act of 1947 has a very broad coverage as to interstate commerce and

affecting commerce. It would seem that the intention of Congress was to protect interstate commerce from being disrupted by strikes and labor disputes. The avowed purpose of the Act is set forth in Section 1 (b) under the heading "Short Title and Declaration of Policy" wherein it is stated:

> "Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.
>
> "It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Under Section 101, Section 1, under the heading "Findings and Policies," Congress again reiterates its policy. This Section provides:

> " . . . which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of

the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market of goods flowing from or into the channels of commerce.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining."

Then again in Section 2, (6) and (7), Congress defines very specifically the terms "commerce" and "affecting commerce". It would, therefore, seem that the main policy of the Act as set forth by Congress was the attempt to prevent the interruption of commerce or the flow of commerce by unfair labor practices or other practices, and from that it would seem very clear that Congress contemplated that if an operation was in commerce or affecting commerce, that the Board had jurisdiction and there is nothing in the Act whereby the Board can refuse to take jurisdiction.

In *N.L.R.B. v. Fainblatt,* 306 U.S. 601, the Court stated:

"The end sought by the enactment of the statute was the prevention of the disturbance to interstate commerce consequent upon strikes and labor disputes induced or likely to be induced because of unfair labor practices named in the Act."

In the case of *N.L.R.B. v. Cowell Portland Cement Company,* Supra, this Court has practically decided this question. The question in that case was whether a small amount of interstate commerce business prevented the operation from coming under the Act as against a larger amount in which a small amount was not under the rule of deminis. This Court held that the N.L.R.B. act

> "on its face . . . evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce by the adoption of measures for the prevention or control of specified acts . . . Examining the act in the light of its purpose and of the circumstances in which it must be applied, we can perceive no basis for inferring any intention of Congress to make the operation of the act depend upon any particular volume of commerce effected more than that to which the Courts would apply the maximum deminis . . . Otherwise, we would have the anomoly of one plant under federal regulation—while alongside it, another competing plant under state regulation. . . .
>
> "Congress could not have intended that it subject laboring men or employers to such a confusing and, in business competition, such a destruction anomoly. . . . Though respondent's manufacturing activities separately considered be deemed intrastate in character, they bear a direct relationship to its interstate activities. Stoppage of respondent's interstate shipments constituting interruption of or interference with the flow of interstate commerce would directly follow from stoppage by industrial strife of its manufacturing operations."

We have the same situation before the Court in this case. There is no question of the amount of interstate operation and there is no question that its operation is *in* interstate. We have the anomolous situation by rea-

son of the Board's rulings whereby the Board in the same case, at its own whim, may take jurisdiction or may not take jurisdiction. In other words, the Board has been exercising jurisdiction in cases where the same state of facts exist. In the *Puritan Chevrolet* case cited, the company operated its sales and service in Auburn, Maine, and purchased its cars from outside the state, but sold no cars outside the state. In this case, the Board exercised jurisdiction. In the two cases, *Bob's Auto* and *Inloes & Dugan Motors* cited, which were tried by the writer, both of these firms are automobile dealers in the City of Newberg, Oregon. They purchase most of their cars from outside the State of Oregon and sell no cars or any other commodity outside the State of Oregon. They were just as much local in character as the case before this Court and yet the Board took jurisdiction.

A number of cases are cited in the *Liddon White Truck Company, Inc.* case wherein the Board took jurisdiction where the operations were local in character. The Board is subjecting, as this Court said in the Cowell Portland Cement Company case, laboring men and employers to a confusing and destructive anomoly. Congress intended that if the operation was in commerce or affecting commerce, that the Board should take jurisdiction.

In the case before the Court, the Petitioner's operations in the State of Oregon separately considered would be all intrastate in character but they have a direct relationship to its interstate activities. The picketing of the Petitioner and the stopping of it from doing business,

would create a stoppage of its interstate shipments constituting an interruption and interference with the flow of interstate commerce.

While the construction of another act is not controlling on this Court on the construction of the National Labor Relations Act of 1947, we submit that it should be most persuasive. The National Labor Relations Act of 1947 in its coverage as to commerce, is almost exactly the same as the Wage and Hour Act, Title 29 U.S.C.A., Sections 202 and 203. In construing the commerce feature of the Wage and Hour Act, the Courts went a long way in construing that the employer's operations were in commerce. They went so far as to hold that if the operation in any remote way was affecting commerce, the firms were under the Act. Congress in amending the Wage and Hour Act, Title 29, U.S.C.A., Section 213, exempted certain businesses from the coverage of the commerce feature of the Act thereby showing the intention to limit the coverage under the Wage and Hour Act. No such amendment was made to the National Labor Relations Act. Consequently, we submit to the Court that this fact is a powerful indication of the intention of Congress to put all firms under the Act whose operations affected commerce at all.

ASSIGNMENT OF ERROR
II.

The Board erred in holding that even though Petitioner's operations were in commerce or affected com-

merce within the meaning of the Act, it would not effectuate the policies of the Act to exercise jurisdiction.

POINTS AND AUTHORITIES

I.

The National Labor Relations Act of 1947 restricted the powers of the Board and created a new agency; Section 3(d) of the National Labor Relations Act of 1947.

Adelard Lincourt v. N.L.R.B., 170 Fed. (2d) 306.

Jacobsen v. N.L.R.B., 120 Fed. (2d) 96, 100 and 101.

ARGUMENT

In reaching a conclusion on the question as to whether the Board has the right to dismiss an unfair labor practice complaint on the sole ground that it would not effectuate the policies of the Act to exercise jurisdiction, we must first look to the language of the Act as amended in comparison with the original National Labor Relations Act. The Board only gets jurisdiction and powers from the Act itself. Under the original Act, the Board was both prosecutor and judge in unfair labor practice cases. The decision as to which unfair labor practice charges should be prosecuted was made by Regional Directors who were directly subordinate to the Board. When an unfair labor practice complaint was issued by the Board, the Board prosecuted the same and ultimately made the findings of fact and conclusions of law with respect to the existence of the unfair practice charged.

It was this provision of the original Act whereby the Board acted both as prosecutor and judge, that brought forth more condemnation and criticism perhaps than any other provision of the original Act. It would not be out of line to suggest that this was one of the reasons for the amendment of the original Act. It seems quite apparent when you turn to the provisions of the National Labor Relations Act as amended that Congress intended and attempted to separate these functions of the Board and place the investigation and prosecution of unfair labor charges in the hands of the General Counsel.

A new Section was added to the Act being Section 3(d) which provides:

> " . . . he shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10, and in respect of the prosecution of such complaints before the Board. . . ."

In the case of *Adelard Lincourt v. N.L.R.B.* cited Supra, the Court noted that the Act as amended introduced in Section 3 of the National Labor Relations Act, a new subsection (d) which took away from the Board the administrative power to issue complaints under Section 10, and held that the administrative determination of the General Counsel was not reviewable. This statutory grant of "final authority" to the General Counsel is not compatible with the idea that the Board has the discretion to assert or reject jurisdiction on the grounds of policy. "Final authority" implies an authority which is not subject to review of any kind. It would completely nullify the demonstrated legislative intent that

the Board should have the right of review over the General Counsel.

Under this new Section, Sub-section 3(d), it is the duty of the General Counsel to issue complaints in unfair labor practice charges. Under this Section, the General Counsel after investigation, filed a complaint in this case alleging jurisdictional facts under commerce or affecting commerce and also facts supporting the unfair labor practice charged and his decision as to whether complaints should be filed or not was final and could not be reviewed by the Board. By his filing of the complaint, the Board acquired jurisdiction and it was incumbent upon them to hear the testimony and decide whether the Petitioner's operations were in commerce or affecting commerce. The Board dismissed the complaint summarily without any hearing (Printed Record, pages 23 to 33 inclusive), and the Petitioner and the General Counsel were at all times ready to substantiate the allegations of the complaint as to commerce.

Under what theory does the Board shed jurisdiction? Even before the Amendment of the National Labor Relations Act in 1947, the Court held in the case of *Jacobsen v. N.L.R.B.*, Supra, that the Board having issued a complaint, has the affirmative duty to conduct a hearing and determine whether jurisdiction exists, and if it does exist, to determine the case on its merits and to issue an appropriate order in respect thereto. This holding was made when the Board issued its own complaint and was in a case where the Board had issued a complaint and then attempted to deny jurisdiction.

The same ruling would most certainly be true in the case before the Court. The General Counsel issued a complaint and he had the final authority as to its issuance and, having issued said complaint, it was incumbent upon the Board to determine from the evidence whether the employer's operations were in commerce and the Board had no authority to summarily dismiss the complaint without a hearing.

POINTS AND AUTHORITIES

II.

The legislative history of the Labor Management Relations Act, 1947, shows that the Board does not have the right to refuse jurisdiction because it does not effectuate the policies of the Act.

House Bill H.R. 3020.

House Report No. 245, 80th Congress, 1st Session, at Page 6.

House Report No. 245, 80th Congress, 1st Session, at Page 74.

Senate Report 105, on S. 1126, 80th Congress, 1st Session, at Page 9.

93 Daily Congressional Record 6599, June 5, 1947.

93 Daily Congressional Record 6600, June 5, 1947.

93 Daily Congressional Record 7001, June 12, 1947.

93 Daily Congressional Record 7691, June 23, 1947.

H. Doc. No. 334, 80th Congress, 1st Session. Reprinted in 93 Congressional Record 7502, June 20, 1947.

93 Congressional Record 5145, May 12, 1947.

93 Congressional Record 5146, May 12, 1947.

93 Congressional Record 6655, June 6, 1947.

93 Congressional Record 6661, June 6, 1947.

93 Congressional Record 6672, June 6, 1947.

ARGUMENT

There are two principal sources of information in determining whether the Board has the power to dismiss a complaint issued by the General Counsel on the ground that it does not effectuate the policies of the Act to exercise jurisdiction. First, the statute itself. We have already discussed the provisions of the statute. Second, the record of the debates in Congress. This source is very important in this case as showing that both the proponents and opponents of the provisions of the amended Act, with reference to the changes in the original Act, knew just exactly what was being done and what the result would be.

H.R. 3020 had provided a completely independent agent who was to be known as the "Administrator" of the National Labor Relations Act. The House Bill also abolished the National Labor Relations Board and created a new three-member Board. In the House Report No. 245, 80th Congress, 1st Session, at Page 6, the Committee said:

> "Unlike the old Board, it will not act as prosecutor, judge, and jury. *Its sole function will be to decide cases.* A new and independent officer, the Administrator of the new Act, will investigate cases and present evidence to the new Board and the new Board must decide the cases. . . ." (Italics ours)

That the Minority members of the House Committee understood that this was to be a separation of functions is shown by the statement of the Minority Report. House Report No. 245, 80th Congress, 1st Session, at Page 74, states:

> "The functions of the Board are to be limited solely to the decision of cases and the Administrator is to assume all of the investigatory and prosecuting functions of the present National Labor Relations Board."

In reporting out S. 1126, the Senate Committee on Education and Labor indicated that they believed changes in the structures of the Board were necessary. At Page 9, Senate Report 105 on S. 1126, 80th Congress, 1st Session, the Committee said:

> "Since it is the belief of the committee that *Congress intended the Board to function like a court,* this bill eliminates the Review Section." (Italics ours)

The Conference Bill accomplished the separation of functions by creating an independent office of General Counsel within the Board structure. Final authority was given to the General Counsel over the issuance of complaints. All of the debates clearly show that it was the intention of the Conference Committee to accomplish the separation of the judicial and prosecuting functions under the Labor Management Relations Act.

Senator Taft filed a summary of the provisions of the Conference Bill in which he stated in 93 Daily Congressional Record 6599, June 5, 1947:

> "One of the major problems with which the conferees were faced was the reconciliation of the provisions of the House Bill and the Senate amendments with respect to the reorganization of the National Labor Relations Board. Under the Senate amendment the present Board members were to be retained in office but four additional members were to be added, thus increasing the Board to seven. The House bill abolished the present Board, created a new Board of three members and limited the duties of the members to quasi-judicial functions. The House bill also created a new independent agency under an administrator to be appointed by the President (subject to Senate confirmation) to perform the investigating and prosecuting functions.
>
> "The conference agreement (section 3(a)) retains the existing Board and increases its membership to five rather than seven. *Further, it recognizes the principle of separating judicial and prosecuting functions without going to the extent of establishing a completely independent agency. It accomplishes separation of functions within the framework of the existing agency by establishing a new statutory office, that is, a general counsel of the Board to be appointed by the President, by and with the advice and consent of the Senate, for a term of 4 years.* . . . He is also to have the final authority to act in the name of, but independently of any direction, control, or review by the Board in respect to the investigation of charges and the issuance of complaints of unfair labor practices and in the prosecution of such complaints before the Board." (Italics ours)

In a final summation, just before the vote on overriding the President's veto of the Conference Bill (93

Daily Congressional Record 7691, June 23, 1947), Senator Taft spoke of the powers of the General Counsel as follows:

> "All that we have done with the Board, as referred to by the Senator from Wyoming, is to make a separation of powers. Under this bill the Board is judicial. It is judicial today. Its counsel will be a prosecutor. He will not have any extraordinary powers—nothing like the power of the Attorney General of the United States, who decides whether criminal actions shall be brought against anyone in the United States. Under this bill, the counsel will have the right to make the decision as between employer and employee; but his decision will be subject to the judicial decision of the Board and, above the Board, the courts; . . ."

The President's veto message also shows clearly that he understood what Congress was intending to do. The President's veto message (H. Doc. No. 334, 80th Congress, 1st Session. Reprinted in 93 Congressional Record 7502, June 20, 1947) said:

> "It would invite conflict between the National Labor Relations Board and its General Counsel, since the General Counsel would decide, without any right of appeal by employers and employees, whether charges were to be heard by the Board, and whether orders of the Board were to be referred to the Court for enforcement. By virtue of this unlimited authority, a single administrative official might usurp the Board's responsibility for establishing policy under the Act."

The Congressional Record abounds with charges by Senators and Representatives that the proposed bill would make the General Counsel a "czar" or a "dictator". Senator O'Mahoney thought that the bill made

the Counsel "completely independent" and gave him "what amounts to the power of prosecution" (93 Congressional Record 5145, May 12, 1947). Senator Ball, rising in response, did not disagree. He merely expressed the hope that the nation might work, ultimately, toward the complete elimination of the "administrative-law" approach (93 Congressional Record 5146, May 12, 1947).

Senator Murray, another opponent of the bill stated (93 Congressional Record 6655, June 6, 1947):

> "The effect of this provision, is to set up a labor czar within the National Labor Relations Board. . . . One person will determine when complaints shall issue in all cases . . . , how cases shall be tried, which cases shall be enforced. . . No real power is vested in the Board in order that their collective common sense may be brought to bear on these serious problems. The whole purpose of the administrative process, that uniform policies may prevail at all levels of work, is thereby frustrated. . . . Coordination in policy is essential in order that rules and regulations, prosecutions, and decisions maintain some consistency."

In 93 Congressional Record 6661, Senator Murray stated:

> "The effect of the proposed change in the status of the Board's General Counsel is to place enormous power in the hands of a single individual, making him virtually a 'labor czar'. This power would include the right to decide what unfair labor practice cases shall come before the Board and the courts for decision. Through this power, the General Counsel, to a considerable degree, would be able to control the policy for the enforcement of the Act."

The question most certainly arises as to whether such language would be used if the power remained in the Board to dismiss any complaint when, in its own opinion, a substantive decision as to the validity of the allegations contained in the complaint would not effectuate the policies of the Act.

A clearer statement on this issue is one of Senator Pepper's opposition to the bill wherein he states:

> "The General Counsel is to determine when a complaint shall be acted upon by the Board. In other words, one man is made the arbiter of every case that comes before the attention of the Board. The Board has no authority to decide whether a case should be brought, or whether a complaint should be acted upon. That exclusive power is given to one lawyer, provided for by the bill agreed to in the conference of the House and the Senate."
>
> (93 Congressional Record 6672, June 6, 1947.)

The Court can readily see that there can be no question whatsoever that Congress intended a separation of powers and has taken away much of the administrative powers of the Board. The Board is now quasi-judicial in character and it does not have any right under the provisions of the Act to dismiss the complaint where, in fact, it has jurisdiction merely on policies.

In conclusion, we submit to the Court that Petitioner's operations were in interstate commerce and effecting interstate commerce and the General Counsel, having issued a complaint alleging an unfair labor practice, and facts showing that Petitioner's operations were in com- or effecting commerce and it, therefore, was the duty

of the National Labor Relations Board to hold a hearing on said complaint and decide the facts therein stated. They clearly erred in dismissing the said complaint summarily without any attempt to hear the evidence and determine from the evidence in a judicial capacity their findings.

Respectfully submitted,

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Attorneys for Petitioner.